



Town of Apple Valley

14975 Dale Evans Parkway | Apple Valley, California 92307

November 13, 2018

VIA ELECTRONIC FILING

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Chairman Ajit Pai
Commissioner Michael O’Rielly
Commissioner Brendan Carr
Commissioner Jessica Rosenworcel
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

RE: MB Docket No. 05-311. Second Further Notice of Proposed Rulemaking. Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as Amended by the Cable Television Consumer Protection and Competition Act of 1992.

Honorable Chairman Pai and Commissioners O’Rielly, Carr, and Rosenworcel:

The **Town of Apple Valley is strongly opposed** to the Further Notice of Proposed Rulemaking (FNPRM), which proposes to allow cable companies to deduct the fair market value for a wide range of public benefits from their franchise fee obligations, namely public, educational, and government (PEG) channel capacity and transmission.

In 2006, California passed the Digital Infrastructure and Video Competition Act, which streamlined the deployment of cable services by making the California Public Utilities Commission (CPUC) the sole franchising authority in the state and preserved many of the provisions commonly found in local franchise ordinances. It was the intent of the state legislature to streamline deployment while keeping local government revenues intact, ensuring that local public rights-of-way remained under control of cities and counties, and that a sufficient amount of capacity on cable networks was preserved for public, educational, and government (PEG) access channels.

Unfortunately, while the FCC would normally exempt from their Orders states with a centralized franchising authority that have preserved such policies, this FNPRM provides no such exemption, threatening to undermine such priorities. As proposed, the FNPRMs broad definition of all “cable-related, in-kind contributions” other than PEG capital costs and build out requirements could be treated as “franchise fees”.

PEG programming offers a host of community benefits, including public, educational and government access channels all aimed at providing locally beneficial information. Government access channels are often the easiest and best ways for local governments to be transparent, often televising city, county, school district, and other government meetings, town hall meetings, public debates and other public policy topics.

In fact, the Town of Apple Valley PEG specifically has been utilized to:

- Promote the Town's "Shop Local" program – segments featuring local entrepreneurs & small businesses
- Highlight residents who give back to the community in "Faces & Places" segments
- Air the highly successful "Pet Match" series from the Municipal Animal Shelter, featuring several adoptable animals every week (resulting in lowered euthanasia rates)
- Offer up-to-date Recreation, Events, and other informative programming

The "fair market value" of such services may be impossible to discern. This FNPRM threatens to limit or eliminate public, educational, and government access channels all meant to better help inform and empower the public. The potential loss of this public benefit alone should be concerning enough for the FCC to reject this FNPRM. Unfortunately, the FNPRM further threatens the use of local right of ways for non-cable related purposes as well.

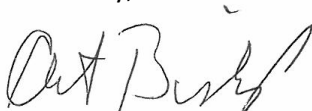
The FNPRM also proposes to prohibit local governments from regulating the facilities and equipment used by cable operators in the provision of non-cable services, such as wireless communications services. If preempted from regulating these installations outside the franchise (since these franchises do not generally address the use of rights of way for non-cable facilities), local governments may lose their authority to manage a cable company's deployment of non-cable facilities, such as "small cells." This preemption would threaten to extend to fees for use of the rights of way, meaning:

- Cable companies can use local rights of way for any purpose, regardless of the terms of the franchise, and avoid having to pay fair compensation to the local government for the use of publicly funded assets in the rights of way.
- Cable companies could potentially install "small wireless facilities" with little to no public input, without having to meet any aesthetic or equipment size requirements aimed to mitigate blight and preserve community character.
- Cable companies would gain a significant advantage against their competitors, including telecommunications providers even though the FCC has just adopted an order lowering their deployment standards, resulting in a race-to-the-bottom deployment strategy for both cable and telecommunications companies.

Fair and appropriate use of the public right-of-way is the fundamental policy principle for the imposition of a cable franchise fee and any other reasonable conditions required to preserve the character of each community. We ask that FCC consider ways that cable operators can improve their services, help close digital divides, and expand deployment to rural and lower income communities.

For the aforementioned reasons, the **Town of Apple Valley strongly opposes** the FNPRM and respectfully urges the FCC to reject the deterioration of PEG services and fair use of the public right-of-way.

Sincerely,



Art Bishop
Mayor

cc: U.S. Rep. Col. Paul Cook (ret), 8th District
U.S. Senator Dianne Feinstein